
From: Powers, David
To: Psyk, Christine; Waye, Don; Hall, Lynda; Croxton, Dave
Sent: 4/2/2013 6:03:58 PM
Subject: RE: Supreme Court Logging Roads Decision & CZARA Implications

Deliberative/Pre-Decisional/Not for Public Disclosure

Ex. 5 - Deliberative

From: Psyk, Christine
Sent: Tuesday, April 02, 2013 2:46 PM
To: Powers, David; Waye, Don; Hall, Lynda; Croxton, Dave
Subject: RE: Supreme Court Logging Roads Decision & CZARA Implications

Deliberative/Pre-Decisional/Not for Public Disclosure

Dave, thank you for making these points. They are critical to make. This is because we are under a settlement agreement which is a legal Agency commitment. So, if we (EPA and NOAA) cannot (for whatever reason) get to a place with Oregon where they provide an approvable coastal nonpoint source program by the dates in the settlement agreement, we won't have the choice to do anything but disapprove. Furthermore, because this is a legally binding settlement agreement, OGC will have high interest in having us meet the deadlines. The Agency takes its settlement agreement commitments seriously. Not making a decision by the dates specified is not an option. I stress this point because this is not a situation where we will have leeway to defer a hard decision. Hence, it's very important to know what the threshold is for approval/disapproval because those are the two options. Conditional approval is not on the table any longer.

That said, we can try to renegotiate the schedule with the plaintiff. However, we (collectively) would have to offer the plaintiff something likely above and beyond the original settlement agreement to have a shot at a longer schedule. Given that Oregon is having difficulty delivering on the original commitments, I don't see much chance of more.

Christine Psyk

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From: Powers, David
Sent: Tuesday, April 02, 2013 1:48 PM
To: Waye, Don; Hall, Lynda; Psyk, Christine; Croxton, Dave
Subject: RE: Supreme Court Logging Roads Decision & CZARA Implications

We ran out of time on our call this afternoon so I'm following up with a few points that I think are important.

Even though the plaintiffs focused on forestry and the IR TMDL, the two big decisions required by the OR CZARA settlement agreement relate to EPA/NOAA making a proposed and final decision on approval of OR's coastal nonpoint source program by specific dates. To make those two decisions, all three areas: on site disposal systems, new developments and forestry need to be addressed by the State in a way that enables us to approve OR's program....and if we disapprove we need to start with holding funds.

Which takes us to the issue that generated the most EPA HQ interest last time...is EPA prepared to: 1) propose disapproval of OR coastal nonpoint source program and/or 2) make a final disapproval decision that results in the

withholding of 319 funding. NOAA will likely need to pose the same questions to their senior management and political folks. Since there are a dozen plus States without final approvals we are setting precedent in OR. Mike Bussell and I briefed Bob Sussman to make sure that agreeing to make those date certain decisions was supported... HQ attorneys and program folks were involved.

We have seen more progress on the forestry front (and on OSDS and new developments) post settlement agreement than we had seen over the past 10 years. The potential loss of 319 funding has been a more powerful motivator for OR DEQ to push the OR Dept. of Forestry to change management on the ground than other CWA litigation in OR. That said the remedy of withholding funding to an agency that does good CWA related work with 319 funding and that has less political clout than the forestry, agriculture, and housing sector agencies seems contraindicated.

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Part

of the problem is that the State hasn't given us a revised timeline to work with and its not clear whether the State is committed to follow through with something that resembles their originally proposed approach. Dave

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From: Wayne, Don
Sent: Thursday, March 21, 2013 12:18 PM
To: Powers, David
Cc: Solloway, Chris; Hall, Lynda
Subject: Supreme Court Logging Roads Decision & CZARA Implications

Dave,

Thanks for copying Chris Solloway and thanks for sending over the talking points whenever they're pulled together. I'm also copying my branch chief because this is so interesting & relevant.

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Also, once this new rule is in place, do you think this should extend that overlap with CZARA for the **Forest Road Management MM**? Our (g) guidance states:

- (1) Avoid using roads where possible for timber hauling or heavy traffic during wet or thaw periods on roads not designed and constructed for these conditions.
- (2) Evaluate the future need for a road and close roads that will not be needed. Leave closed roads and drainage channels in a stable condition to withstand storms.
- (3) Remove drainage crossings and culverts there is a reasonable risk of plugging or failure from lack of maintenance.
- (4) Following completion of harvesting, close and stabilize temporary spur roads and seasonal roads to control and direct water away from the roadway. Remove all temporary stream crossings.
- (5) Inspect roads to determine the need for structural maintenance. Conduct maintenance practices, when conditions warrant, including cleaning and replacement of deteriorated structures and erosion controls, grading or seeding of road surfaces, and, in extreme cases, slope stabilization or removal of road fills where

necessary to maintain structural integrity.

(6) Conduct maintenance activities, such as dust abatement, so that chemical contaminants or pollutants are not introduced into surface waters to the extent practicable.

(7) Properly maintain permanent stream crossings and associated fills and approaches to reduce the likelihood (a) that stream overflow will divert onto roads, and (b) that erosion will occur if the drainage structures become obstructed.

-Don

From: Powers, David
Sent: Thursday, March 21, 2013 2:42 PM
To: Waye, Don
Cc: Solloway, Chris
Subject: RE: Office of Water HQ Visit -- Draft Agenda and Instructions for Preparing briefing documents and presentations

I'll send you or have Jenny Wu send you the OR CZARA talking points once we've got them together.

Ex. 5 - Deliberative

From: Waye, Don
Sent: Thursday, March 21, 2013 9:23 AM
To: Powers, David
Subject: RE: Office of Water HQ Visit -- Draft Agenda and Instructions for Preparing briefing documents and presentations

Non-Responsive

From: Waye, Don
Sent: Thursday, March 21, 2013 12:19 PM
To: Powers, David
Subject: RE: Office of Water HQ Visit -- Draft Agenda and Instructions for Preparing briefing documents and presentations

Thanks, Dave.

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Ex. 5 - Deliberative

Non-Responsive

From: Powers, David
Sent: Thursday, March 21, 2013 11:51 AM
To: Waye, Don
Subject: FW: Office of Water HQ Visit -- Draft Agenda and Instructions for Preparing briefing documents and presentations

Don -- FYI - Nancy Stoner and other senior HQ OW managers will be in R10 Seattle on April 10/11. We plan to talk about the CZARA litigation a.m. on the 11th. I wanted to give you a heads up.

From: Psyk, Christine
Sent: Wednesday, March 20, 2013 2:51 PM

To: Anderson-Carnahan, Linda; Szerlog, Michael; Parkin, Richard; Eaton, Thomas; Allnutt, David; Palmer, John; Schary, Claire; Powers, David; Chung, Angela; Croxton, Dave; Jennings, Marie; Lidgard, Michael; Opalski, Dan; VanHaagen, Paula
Subject: Office of Water HQ Visit -- Draft Agenda and Instructions for Preparing briefing documents and presentations

As many of you know, EPA Office of Water senior management is planning to visit Region 10 on April 10 and 11th. The senior managers who will be attending from HQ are: Nancy Stoner (AA), Mike Shapiro (Deputy AA), Peter Grevatt (Drinking Water/Groundwater), Deborah Nagle (OWM), Jeff Lape (OST), and Dave Evans (OWOW). I hope you all have had some contact with your HQ's counterparts to identify the topics that will be covered during the visit. At this point, we have a group of topics identified that are of mutual interest to HQ and Region 10. The attached agenda reflects the topics that will be covered and next to each one are the names of the individuals who will present those topics.

Next Steps: HQ would like the Region to prepare 2 page (or less) briefing documents on each of the topics that will be covered during the visit. Those drafts are due a week from today (March 27th). If your name is next to a topic, please prepare a draft two pager (or less) and get that to me and Paula Vanhaagen by March 27th. Final briefing documents are due by April 5th. For the actual meetings on April 10 and 11th, you may also want to prepare a powerpoint presentation, whatever is appropriate to convey the information/messages. Those are also due on April 5th.

Let me know if you have any questions/concerns. Thanks.

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